

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc.

Docket No. ER06-1513-000

ORDER ACCEPTING NON-CONFORMING MARKET PARTICIPANT  
SERVICE AGREEMENT

(Issued November 16, 2006)

1. On September 21, 2006, ISO New England Inc. (ISO New England) submitted, pursuant to section 205 of the Federal Power Act<sup>1</sup> and the ISO New England Inc. Transmission, Markets and Service Tariff, FERC Electric Tariff No. 3 (the Tariff), a non-conforming Market Participant Service Agreement (Service Agreement). The Service Agreement was executed by 330 Fund I, L.P. (330 Fund). As discussed below, the Commission accepts the non-conforming Service Agreement as filed, to become effective September 22, 2006, as requested.

**Description of Filing**

2. ISO New England asks the Commission to accept the executed, non-conforming Service Agreement. The Service Agreement sets the contractual obligation for ISO New England as New England's regional transmission organization, to provide service under its Tariff to market participants, as well as the contractual obligation for market participants to comply with the Tariff. The Service Agreement at issue in this case is non-conforming by virtue of the elimination of section 3.6 of the pro forma Service Agreement. ISO New England explains that section 3.6 provides that the market participant agrees to be bound by the "Participants Agreement" and to pay the required fees and charges. ISO New England proposes to waive the requirements of section 3.6 because the 330 Fund wishes to participate solely in the Financial Transmission Rights

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<sup>1</sup> 16 U.S.C. § 824d (2000).

(FTR) Auctions. Specifically, section 3.6 of the pro forma agreement provides as follows:

3.6. By entering into this Agreement, the Market Participant agrees to be bound by the Participants Agreement, through [New England Power Pool] NEPOOL or individually, as the case may be, and to pay the fees and charges specified therein. The Participants Agreement provides processes for stakeholder input, individually and collectively, into revisions of certain provisions of ISO New England Operating Documents and the planning process for the New England Transmission System.

3. ISO New England states that its previous filing, on February 10, 2006 (February 10 filing), in Docket No. ER06-620-000, was materially identical to the instant filing. There, Lotus Energy sought to participate in the FTR auctions, but not to participate in the NEPOOL stakeholder process. ISO New England determined that it was not necessary to impose section 3.6 of the Service Agreement for FTR-only participants. ISO New England explained that FTR-only participants do not participate in the energy and ancillary services markets, so such participants have less need or inclination to participate in stakeholder discussions at the Participants Committee regarding the development of market designs and rules. As such, ISO New England stated, FTR-only participants more closely resemble transmission-only customers, which are not required to be bound by the Participants Agreement, than entities participating in core energy and ancillary services markets. The Commission accepted the February 10, 2006 filing by order issued April 11, 2006.<sup>2</sup>

4. Here, the 330 Fund desires to participate only in ISO New England's FTR Auctions with no desire or inclination to participate in the core energy and ancillary services markets.

5. ISO New England has indicated that the obligation to pay fees and charges under the Participants Agreement could constitute a financial barrier that would discourage some entities from participating in the FTR market. ISO New England requests waiver of the Commission's prior notice requirements, so that the effective date of September 22, 2006, can be granted.

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<sup>2</sup> See Commission Order at *ISO New England Inc.*, 115 FERC ¶ 61,035 (2006).

6. As it stated in the February 10 Filing, ISO New England states here that it will be working with NEPOOL through the stakeholder process to determine the extent to which a second, alternative, pro forma version of the Service Agreement should be developed for inclusion in the Tariff for use by Demand Response-only and FTR-only entities. If determined to be needed or useful, ISO New England states that it will be filed for Commission approval.

### **Procedural Matters**

7. Notice of ISO New England's September 21, 2006, filing was published in the Federal Register, 71 Fed. Reg. 58,595 (2006), with interventions and protests due on or before October 12, 2006. The NEPOOL Participants Committee filed a timely motion to intervene, with no comments. No protests were filed.

### **Discussion**

8. The Commission finds that the Service Agreement reflects a material deviation from the pro forma service agreement currently on file with the Commission. However, given the fact that the 330 Fund will require few if any of the available services offered by NEPOOL, the removal of section 3.6 from the Service Agreement at issue here is just and reasonable, and not unduly discriminatory or preferential. The Commission agrees with ISO New England that exempting the 330 Fund from section 3.6 could encourage participation in the FTR markets.

9. The Commission will grant ISO New England's request for waiver of the 60-day notice requirement. ISO New England has shown good cause for waiver, as supported by the fact that the filing in this case is uncontested and does not change rates.<sup>3</sup> The 330 Fund signed its non-conforming Service Agreement on August 31, 2006. The 330 Fund requested that it become eligible to participate in the ISO's FTR Auctions as soon as possible. The agreement was promptly executed and filed in accordance with the 330 Fund's request. The Commission finds good cause exists to grant this request.

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<sup>3</sup> See *Central Hudson Gas & Elec. Corp.*, 69 FERC ¶61,106 at 61,338, *reh'g denied*, 61 FERC ¶61,089 (1992), waiving prior notice requirement when uncontested filing does not change rate.

The Commission orders:

The Commission accepts the non-conforming Service Agreement for filing, to be effective September 22, 2006, as requested.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.